

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

DANNY C. McNULTY,

Plaintiff,

v.

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

CIVIL ACTION NO. 5:09-00852

PROPOSED FINDINGS AND RECOMMENDATION

The Defendant, Michael J. Astrue, Commissioner of the Social Security Administration, by counsel, Kelly R. Curry, Assistant United States Attorney for the Southern District of West Virginia, has moved the Court to remand this case to the Commissioner pursuant to the provisions of sentence four of 42 U.S.C. § 405(g) “for further administrative development.” (Document No. 9.) The Defendant asserts that “this case would benefit by further administrative development.” (Id. at ¶ 2.) The Defendant further asserts that Plaintiff’s counsel has been contacted and does not oppose this Motion. (Id. at ¶ 3.)

Sentence four of 42 U.S.C. § 405(g) provides that “[t]he court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing.” The transcript has been filed in this case (Document No. 6.), and the Plaintiff has filed a Brief in Support of Judgment on the Pleadings. (Document No. 8.) Having the Brief, the Defendant filed his Motion to Remand rather than a Motion for Judgment on the Pleadings. Apparently in view of the Plaintiff’s allegations, the Defendant requests a remand for further action and analysis consistent with the applicable law and Regulations. The Commissioner is required to include an

explanation of what evidence, or inferences drawn therefrom, were relied on in arriving at a decision. See Cook v. Heckler, 783 F.2d 1168, 1172 (4th Cir. 1986). Though the Defendant did not set forth the specific evidence relied on in determining that remand is appropriate, the undersigned accepts the Defendant's assertion in the absence of any objection by the Plaintiff and finds that remand is appropriate. In the future, the undersigned strongly suggests that the Defendant set forth the information required by the decision in Cook.

Accordingly, there being good cause for the Defendant's Motion to Remand and there being no objection, it is hereby respectfully **RECOMMENDED** that the District Court confirm and accept the foregoing findings, **GRANT** the Defendant's Motion for Remand (Document No. 9.), **REVERSE** or **VACATE** the decision of the Commissioner, and **REMAND** Plaintiff's case to the Commissioner pursuant to the fourth Sentence of 42 U.S.C. § 405(g) for further proceedings as Defendant envisions them in his Motion to Remand.

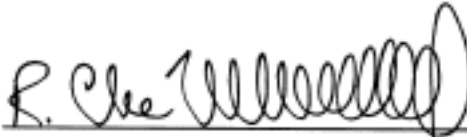
The parties are notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable Irene C. Berger, United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(e) and 72(b), Federal Rules of Civil Procedure, the parties shall have three days (mailing/service) and then fourteen days (filing of objections) from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals.

Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 155 (1985); Wright v. Collins, 766 F.2d 841, 846 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Copies of such objections shall be served on opposing parties, District Judge Berger, and this Magistrate Judge.

The Clerk is directed to file this Proposed Findings and Recommendation and to send a copy of the same to counsel of record.

DATE: March 8, 2010.



R. Clarke VanDervort
United States Magistrate Judge